

## **Minutes of Public Meeting**

### **Environmental Quality Commission**

Room 125 Capitol Annex, Frankfort, Kentucky.

March 21, 2002--2 p.m. to 4:00 p.m.

#### **EQC Commissioners and Staff Present**

Aloma Dew, Chair

Betsy Bennett, Vice-Chair

Patty Wallace

Serena Williams

#### **Staff**

Leslie Cole, Director

Erik Siegel, Assistant Director

Lola Lyle, Research Analyst

Frances Kirchhoff

#### **Regrets**

Jean Dorton

Gary Revlett

Bob Riddle

#### **Speakers/Representatives Present**

Hank List, Deputy Secretary, NREPC

Tom FitzGerald, Kentucky Resources Council

Tony Sholar, Senior Vice President of Public Affairs,  
Kentucky Chamber of Commerce

### **Opening Remarks/Approval of EQC Meeting Minutes**

Environmental Quality Commission (EQC) Chair Aloma Dew opened the meeting at 2 p.m. The focus of the meeting was to review environmental legislation of the 2002 session including power plant siting; solid waste legislation; Louisville's vehicle emission testing program; smart growth; and the proposed Pine Mountain Trail Park.

Ms. Dew asked for a motion to approve EQC January 24 meeting minutes. A motion was made by Betsy Bennett and seconded by Serena Williams to approve the minutes. The motion passed unanimously.

The Chair introduced the first speaker, Mr. Hank List, Deputy Secretary of the Natural Resources and Environmental Protection Cabinet. Mr. List gave an update of bills concerning the environment. He gave a brief overview of bills on which action was taken, bills that passed, and bills that failed. Bills that the Governor has signed into law include HB244 (Removes the sunset clause on the hazardous waste assessment fund); HB422, (Reauthorizes the waste tire fund until July 31, 2006 and authorizes a waste tire amnesty program); and SB61 (Buildings, guaranteed energy savings performance). Bills that are being acted upon are HB 540 taken on the form of SB 257 (power plant siting); HB174 (solid waste bill); HB854 (sewage collection and treatment) and SB556 (Pine Mountain State Park); and HB600 (Governor's Smart Growth initiatives). Of the bills that failed only HB738 (water withdrawal) was significant.

Questions and answers followed.

#### **Did anyone try to get a CAFO regulation through the session?**

Mr. List - We are very pleased with the first legal court decision regarding the CAFO regulations and we are waiting to see the second decision. When this session is over, we will know what they have decided and if they will try to replace what might have been shot down by the court. We will then have a better feel for what our next step should be.

#### **What is the status of HB728?**

Hank List - It is under consideration in the senate.

**In the Courier Journal this morning there was an article and a representative stated that if the straight pipe bill passes, it would be a nightmare for subdivisions in his district that discharge into old mine works.**

Hank List - I didn't know things like that existed. If we know, we ignored it, but I don't think that was the case. Now it is the case of now that they told us, you have to look in to it.

**What about HB350 concerning organic certification?** Unless 350 is passed there will be no Kentucky organic certification program. Is this true?

Hank List – not familiar with this bill.

**SB 61 making things more environmentally responsible—what specific things do you have in mind; replacing lightbulbs with florescent, solar panels, etc.? What kinds of things does this involve.**

Hank List - Yes, lightbulbs, construction, renovation techniques, etc. Kentucky will look at performance contracting to do the retrofits in state buildings, school facilities, and all government buildings. We're hoping this legislation will make buildings more energy efficient.

The Chair next introduced Tom FitzGerald with the Kentucky Resources Council. Mr. FitzGerald thanked Deputy Secretary List for his service to Kentucky as a representative from Lexington some 20 years ago and for his present position as Deputy Secretary of the Natural Resources and Environmental Protection Cabinet.

Mr. FitzGerald gave an overview of bills in the legislation session.

- Pine Mountain State Park SB556 Pine Mountain State Park passed the house and is pending in the senate with a number of amendments.
- HB496 requires the Cabinet, upon discovery of a violation of air, waste or water laws, to stand idly by and wait until a preliminary written notice of violation is given, a mandatory 45 day waiting period in which to correct the violation before fining a Company for a violation. The bill has gone to rest in house A & R.
- HB405 provides that a mining permit is not required of a landowner if coal extraction is related to construction, less than 5,000 tons, and the coal or proceeds of a coal sale are donated to charitable, governmental, or educational organizations. This bill is not consistent with federal law and will not become law unless it is approved by OSM.
- HB809 attempts to correct deficiencies in law allowing a limited easement of necessity allowing mining permittees access to land where off-site damage has occurred and the state has mandated that the violation be corrected. Law creates an expeditious process for compensation of surface landowner for damages from the violation and from the correction of the violation. In the case of a landslide for example, the company would forfeit their bond and the state would go onto the site and correct the damage. The intent of the law is for the company to correct the problem and not forfeit their bond.
- HB798 approving coal mine mitigation measures when a stream is impacted by the mine; specify the physical mitigation measures which shall be acceptable to the Cabinet; allow payments by the coal mine operator into a fund in lieu of physical mitigation; create a trust and agency account to receive payments. The federal government indicates they might consider that.
- HB791 repeals KRS 262.875 relating to the Interagency Farmland Advisory Committee; confirm Executive Order 2001-1516, which abolishes the Interagency Farmland Advisory Committee. This would codify that repeal but not replace it with any other farmland committee. There is a farmland committee replacement as part of the Smart Growth bill (HB600).

- SB102 Directs the Jefferson County Air Pollution District to develop a plan for meeting air quality goals without a vehicle emission testing program. The bill calls for the elimination of the VET. The bill passed through the senate and is in the house.
- SB193 amends various provisions of law addressing petroleum underground storage tank fund. The number of sites needing cleanup under that program will continue to decline. My concern is that SB193 is shifting the money much too early.
- HB174 Environmental impact fees, assessed and collected, “bottle bill.” I’m a little more optimistic about its passage. By taking out the funding, there are some funding holes. The senate leadership is not going to put the disposal fee in front of the senate for consideration because it is not there for it. They have proposed to use the landfill disposal fee to fund the debt service.
- HB540 to establish the Kentucky State Board on Electric Generation and Transmission Siting and the Environment; prohibit the exhaust stack of an electric generating facility from locating closer than 3000 feet from any residential neighborhood, historic structure, school, hospital, or nursing home. The siting bill as it came out of the house was flawed. It has gotten better in the senate and is going to the house for vote.
- HB507 (subsection 39) concerning blocking new mining permits where a mining applicant is owned or controlled by an interest that owns or controls an outlaw mining operation. Keeping the ownership and control language in the senate budget memorandum is a very effective tool for stemming violations.

Questions and answers followed.

**What happened to HB694—to grant enforcement power over criminal litter laws to solid waste coordinators?**

FitzGerald—It never cleared the house. I don’t think it was ever heard. There is language in HB174 to decriminalize littering and to allow it to be a prepaid fine rather than a misdemeanor crime with a full court hearing. The reason for that is the lack of civil penalties or a prepayable criminal penalty has made some local communities not enforce littering laws.

The Chair introduced the final speaker, Tony Sholar with the Kentucky Chamber of Commerce. Mr. Sholar stated that the environmental bills before the senate are bills that have been here before. He addressed the solid waste bill and asked why it is fair for the state to levy a tax on all citizens when some local governments already take care of their solid waste problems. That would only reward those who at this time are not taking care of their problem and punishing those that do. All local governments should take care of the problem themselves. Where is the leadership of the local level? Mr. Sholar stated that the VET legislation is a local issue. He stated he would go along with whatever the local Chamber wants to do. Mr. Sholar noted that the budget is a real concern especially because it is being balanced through the use of various funds. He noted that the raiding of these funds would create a structural imbalance in the budget. Other issues discussed by Mr. Sholar included:

- Cell tower siting. He noted that KRS100 gives every county the power of to use planning or land use planning. We don’t need additional laws.
- HB244—should tell people up front what the state wants and not do things backdoor.
- HB600—concerned about option for state to be resource of innovation but there are problems with the state telling counties what to do. Question of house rule.
- Smart Growth – no funding for tax credits

Questions and answers followed.

**Would you be opposed to the state condemning private land for industry use?**

Sholar - This is done with acceptance and the help of the local community. They set a value and purchase at that value. Eminent domain is only for public use. The state cannot use eminent domain to condemn land for private use.

**Does the Chamber support HB618 to eliminate the Jefferson County VET program?**

Sholar - Louisville Chamber switched their support for this. Major industry voted to oppose this bill because it shifts the burden of environmental compliance back to smoke stack industries away from mobile sources.

**Would the governor veto HB618?**

Hank List - If it passed on party line, possibly. Don't know if Governor would veto.

The Chair thanked all the speakers for coming and stated the EQC supports HB174, SB257, HB540; and HB738. EQC also supports the creation of the Pine Mountain Trail State Park and encouraged the Governor and the Kentucky General Assembly to ensure these programs are adequately funded now and in future budgets.

**Other Business**

*Selection of Earth Day Award winners.* This year EQC received about 20 nominations. Ms. Cole read names and a brief description of the nominations. The Commission selected the winners.

*EQC 30<sup>th</sup> anniversary projects.*

- *Essays* - Ms. Cole reviewed essays on Kentucky's environment received for one of the EQC anniversary projects. EQC is expecting to receive about 15 responses to a request for essays. These responses will be featured in the EQC newsletter and on our website.
- *Timeline* – Staff provided commissioners with a draft on its timeline of environmental events. Ms. Cole asked commissioners to review and provide any additional events.
- *Proclamation* - Governor Paul Patton signed a proclamation commending EQC on its 30th anniversary and declaring April 22 through May 22 as Environmental Awareness Month in Kentucky. This proclamation will be presented on Earth Day Awards celebration.

*Budget*

Ms. Cole reviewed the EQC budget. With 67 percent of the fiscal year lapsed, the commission has spent 65 percent.

Next meeting will be Earth Day, April 22.

With no further business the meeting adjourned at 4:00 PM.



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signed

5/30/02

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dated